IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO. 42 OF 2005

Sushma Sanjay Gaikwad .. Petitioner

versus

Sanjay Pralhad Gaikwad .. Respondents

...

Mr.A.G. Toraskar ior the petitioner.

Ms.Leena Nagarkar i/b S.A. Sawant for the respondent.

CORAM : B.H. MARLAPALLE,J

DATED : 20th September 2005.

P.C.:

1. Heard Mr.Toraskar, the learned counsel for the petitioner wife and Ms.Leena Nagarkar i/b S.A. Sawant for the respondent husband..

2. This is an application under section 24 of the Code of Civil Procedure 1908 praying for transfer of Marriage Petition No.24 of 2005 filed by the

respondent husband and pending before the Civil Judge, Sr.Division at Satara to the family Court at Bandra Mumbai. The wife claims that she has filed the petition No.E-348 of 2004 u/s.125 of the Code of Criminal Procedure before the Family Court at bandra for maintenance. As per her, the respondent husband is irregular in attending to the Family Court at Mumbai and on the other hand, it is inconvenient for her to go all the way to Satara and attend to the petition filed by the husband for a decree of divorce. She further states that there is no one in the family to accompany me to go to Satara and the proceedings by the husband have been initiated only to harass her.

3. The respondent husband has filed affidavit in reply and opposed the application and to the said reply, he has annexed the medical report (psychological assessment report) by Dr.Sharmila Shetty, Occupational Therapist and Clinical Psychologist at Mumbai. The conclusions to the said report have been relied upon in support of the case that all the allegations made by the petitioner wife regarding sexual and physical abuse by the in-laws are imagined. The husband further states that his

parents are of old age, his father is handicapped person who is always in a wheel chair and he himself is doing agricultural work. He has also described in detail the unpredictable behaviour of the wife on several occasions.

4. The petitioner wife has filed additional affidavit and stated that she has a sincere desire to live with her husband and happy and harmonious life provided he is ready to take a separate resident on rental basis for which her parents would pay 50% of the rent. The husband is residing at village Shirambe, in Koregaon Taluka , District:Satara and it would be unnatural for him to set up a separate home away from his parents. The report of Dr.Shetty concludes in the following words :

> "Sushma has borderline-mild mental retardation and below average visual and auditory perceptual development. The projective tests reflect emotional problems like anxiety, inadequacy, insecurity and impulsivity stemming from her attitude towards her family members and the restrictive home atmosphere.

> The informal assessments reveal poor comprehension, reasoning, judgement, memory and low frustration tolerance."

. The lycostatic impression in the said report is "poor social adjustment resulting in marital discord due to low intellectual functioning."

5. Though the wife has instituted proceedings u/s.125 of the Code of Criminal Procedure in earlier point of time in the Family Court at Mumbai, Section 21A of the Hindu Marriage Act 1955 does not seem to be applicable to the instant case, in as much as the proceedings instituted by the wife are not under the Hindu Marriage Act 1955 and therefore, this application can be considered strictly as per section 24 of Code of Civil Procedure and by taking into consideration the comparative hardships.

6. The parties were married on 24th December 2002 as per the Hindu Rites at Village Revalkar wadi, Taluka Khatav District Satara. As per the affidavit submitted by the husband, the wife has been constantly alleging that the marriage was against her

desire and she is not used to attending the domestic work. There is no issue to the couple as yet and from the additional affidavit submitted by the wife,, it would be inferred that the financial position of her parents is better than the financial position of the husband. The comparative hardship in the instant case would be more to the husband who has to travel from his village to Mumbai where he has no place to stay and on the other hand, it seems that the wife has her grandmother and other relations in Satara District and there may not be unbearable difficulties to attend to the Court at Satara. It would not be as difficult for her as it may be for the husband to attend to the Family Court at Mumbai and therefore, there is no merit in this transfer application.

7. The same is hereby rejected.

B.H. MARLAPALLE, J